

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
VOLUME PRICING CONTRACT
Network Associates Incorporated**

This **VOLUME PRICING CONTRACT** for the acquisition of McAfee, Sniffer, and Magic Solutions Software products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Networks Associates, Inc., d/b/a Network Associates, Inc., (Network Associates) with its principal place of business at 3965 Freedom Circle, Santa Clara, CA 95054.

1. Contract Scope and Term

This Contract sets forth the terms and conditions governing the acquisition of McAfee, Sniffer, and Magic Solutions Software products and related services. Terms used in this document shall have the meanings set forth below in Section 2, Definitions. This Contract is available for use by all Customers.

The term of this Contract shall be two (2) years commencing upon the last date of approval by the parties. Prior to expiration of the original term, the parties may renew this contract, upon approval of DIR, for up to two (2) optional one-year terms. Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination.

2. Definitions

Terms used in this Contract shall have the following meanings:

- A. DIR** - the Department of Information Resources.
- B. Customer** - any Texas state agency and local government as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003), and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.
- C. Manufacturer** - Network Associates, Inc.
- D. Contractor Order Fulfillment Agent ("COFA")** - subcontractor designated by the Manufacturer who participates as a primary distribution source for the Manufacturer.
- E. Product** - any McAfee, Sniffer, and Magic Solutions Software and/or Hardware item manufactured or produced by the Manufacturer. Product may include any pre-loaded software necessary for operation.
- F. Services** - any value-added service that the Manufacturer and/or COFA may perform as related to products available under this Contract. For example: warranty, support services, installation, and product training.
- G. State Contract Administrator** - the individual as appointed by DIR to administer this Contract on behalf of the State of Texas and the Customers.
- H. Manufacturer Contract Administrator** - the individual as appointed by the Manufacturer to administer this Contract on behalf of the Manufacturer and COFAs.
- I. Administrative Fee** - the fee used to defray DIR's cost of negotiating, executing and administering this contract.
- J. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).

K. Information Resources Technology (Technologies) – as defined in Texas Government Code §2054.003.

L. Day Shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

M. State – refers to the State of Texas.

3. Entire Agreement and Order of Precedence

This Contract; Appendix A, Standard Clauses for Texas DIR Contracts; Appendix B, Manufacturer's Click Wrap License; Appendix C, Manufacturer's Historically Underutilized Businesses Subcontracting Plan; and Appendix D, Pricing Schedule, constitute the entire agreement between the parties hereto. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, Appendix C, and finally Appendix D. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, with the approval of DIR.

The terms and conditions set forth herein shall govern all transactions by Customers under this Contract. Customers shall not have the authority to modify the terms of this Contract, except as to receive better terms or pricing for a particular procurement than those set forth herein. In such event, Manufacturer shall furnish a copy of such better offerings to DIR upon request. No additional term or condition of a purchase order issued by a Customer can weaken a term or condition of this Contract. In the event of a conflict between a Customer's purchase order and this Contract, the Contract term shall control.

4. Product and Service Offerings

Products available under this Contract are set forth as any McAfee, Sniffer, and Magic Solutions Software and/or Hardware item manufactured and produced by the Manufacturer. Services include any value-added service that the Manufacturer and/or its COFA may perform as related to products available under this Contract.

A. Products

Manufacturer will maintain a product list including pricing, product descriptions, and product specifications for all products offered under this Contract. The product list may be updated at any time during the term of this Contract to incorporate product model changes or product upgrades, new products and/or services, and remove obsolete or discontinued products and/or services.

B. Services

Manufacturer will maintain a list including pricing and descriptions for all services offered under this Contract. The services list may be updated at any time during the term of this Contract to incorporate changes to the service offering.

5. Contract Administration

DIR and the Manufacturer will each provide a Contract administrator to support this Contract. Information regarding the Contract administrators will be posted on the Internet web site designated for this Contract.

A. DIR Contract Administrator

DIR shall provide a Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) advising DIR of Manufacturer's performance under the terms and conditions of this Contract, and iii) periodic verification of product pricing and monthly reports submitted by Manufacturer.

B. Manufacturer Contract Administrator

Manufacturer shall provide a Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) facilitating dispute resolution between an COFA and a Customer, and iii) advising DIR of COFAs performance under the terms and conditions of this Contract. DIR reserves the right to require a change in Manufacturer's then-current contract administrator if the assigned administrator is not, in the opinion of DIR, adequately serving the needs of the State.

6. Use of COFAs

Manufacturer shall provide service, sales and support resources to serve Customers at multiple geographic purchasing locations throughout the State of Texas. DIR agrees to permit Manufacturer to utilize designated COFAs so that sufficient resources are available to insure maximum service capability throughout the State. Such participation is subject to the following conditions:

A. Designation of COFAs

Manufacturer shall designate up to (8) COFAs to participate under this Contract. DIR reserves the right to rescind any such COFA participation or request that Manufacturer name additional COFAs should DIR determine it is in the best interest of the State.

Manufacturer shall have the right to qualify COFAs and their participation as fulfillment agents under this Contract by product line, contracting program (i.e., government/educational sales), geographic region, size/sales volume, technical training or other criteria, provided that: i) such criteria are uniformly applied to all potential COFAs based upon Manufacturer's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; and ii) all general categories of criteria are fully covered by participating COFAs to meet the needs of Customers.

All COFAs who have been approved by the Manufacturer in accordance with the foregoing paragraph shall be eligible to quote lower pricing, but only with Manufacturer's approval, for procurements under this Contract. Manufacturer warrants and represents that it shall not prohibit COFAs from participating in other procurement opportunities offered through DIR for products other than those included in this contract.

B. Changes in COFA List

Manufacturer may add and/or delete COFAs throughout the term of the contract with notification to DIR. However, the participating COFAs must geographically provide adequate coverage to the entire State.

C. Conditions of COFA Participation

All participating COFAs must be approved Catalog Information Systems Vendors with the State of Texas. At least 25 percent (25%) of the participating COFAs must be Historically Underutilized Businesses as defined by the Texas Building and Procurement Commission.

D. Responsibility for COFA Performance and Reporting

Manufacturer covenants to DIR that its contracts with authorized COFAs shall be consistent with and contain the terms and conditions of this Volume Pricing Contract, as they apply to COFA's duties to DIR and its Customers. Authorized COFAs shall report sales of all Products and Services and tender payments for administrative use fee required by Section 11, Reporting and Administrative Fees, to Manufacturer.

E. Available Products and Services

Products and services ordered directly through COFAs shall be limited to products and services previously approved for inclusion under this Contract in Section 4, Product and Services Offerings, and shall be subject to all terms and conditions of this Contract as a condition of COFA participation.

F. COFA Pricing to the Customer

COFAs shall only sell to Customers at prices consistent with this Contract or otherwise approved by Manufacturer. To the extent that Manufacturer permits the sale of Products to Customers at prices below or different from the pricing agreed to in this Contract, then all other COFAs will be permitted to sell to Customers at those same prices. DIR acknowledges, however, that prices to all Customers will not necessarily be the same at all volume levels. COFAs are not permitted to add margin to price listed in 7A.

7. Pricing

If Manufacturer offers and makes sales of products and services at a lower price, based on a quantity of one, from that specified in this Contract, to an eligible DIR Customer, other entity or consortia authorized by Texas law to sell Manufacturer's products and services to eligible DIR Customers, then the available price levels in this Contract shall automatically be adjusted to that lower price.

A. Customer Discount

Based on a quantity of one (1), the Customer price from the COFAs for all products and services will be as listed on Manufacturer's designated web site. Customer may negotiate more advantageous pricing for large volume purchases with a participating COFA, subject to approval by the Manufacturer. The Customer price set forth herein shall adhere to Section 6 Paragraph F, COFA Pricing to the Customer. DIR acknowledges, however, that prices to all Customers will not necessarily be the same at all volume levels.

B. DIR Administrative fee

The DIR administrative fee specified in Section 11, Reporting and Administrative Fees, shall be included in the Customer price. The administrative fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be F.O.B. Customers' destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

D. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 USC Secs. 4253(i) and (j).

E. Changes to Prices

Manufacturer may change the price of any product or service at any time, based upon changes to the Manufacturer's Suggested Retail Price, but discount levels provided to COFAs shall remain consistent with the discount levels referenced in Paragraph A, Customer Discount, of this Section. Price decreases shall take effect automatically during this Contract term and Manufacturer shall pass all price decreases on to the Customer.

Manufacturer may make product model changes and add new products or product upgrades at any time and the discount offered for the same shall incorporate comparable pricing.

8. Order Processing and Payments

All Customer purchase orders will be placed directly with the participating COFAs. Accurate purchase orders shall be effective and binding upon COFA when placed in the mail or electronically transmitted prior to the termination of this Contract period.

Invoices shall be submitted by the COFA directly to the Customer. All payments for products and/or services purchased under this Contract and any provision of acceptance of such products and/or services shall be made to the COFA by the Customer.

Invoices must be timely and accurate. Each invoice must match Customer's order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's purchase order number or other pertinent information for verification of receipt of the order by the Customer.

Customer(s) shall comply with Chapter 2251, Texas Government Code, in making payments to COFA. Payment under this contract shall not foreclose the right to recover wrongful payments.

9. Software Licensing Agreement

Customers purchasing software licenses under this Contract shall hold, use and operate such software subject to compliance with the Manufacturer's Click Wrap License Agreement set forth in Appendix B hereto. No changes to the License Agreement Terms and Conditions may be made unless previously agreed to between Manufacturer and DIR. Customers may not add, delete or alter any of the language in Appendix B. Each COFA shall make the Software Licensing Agreement terms and conditions available to all Customers at all times.

Compliance with the Software Licensing Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Manufacturer's End User Licensing Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Manufacturer's End User Licensing Agreement terms and conditions.

10. Internet Access to Contract and Pricing Information

Access by Customers to Contract terms and pricing information shall be made available and posted on the Internet. To that end, upon sixty (60) days from execution of the Contract, Manufacturer or its designated COFA will be required to host the complete Contract product and service offerings, including pricing, at Manufacturer's or its designated COFA's Internet site. Internet access to this information will be provided including all subsequent changes to the product and services offerings and pricing during the term of this Contract at no cost to DIR, the State, and Customers.

A. Accurate and Timely Contract Information

Manufacturer warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely

manner which renders it clearly distinguishable from other, non-Contract offerings at Manufacturer's or its designated COFA's web site. Manufacturer shall indemnify DIR, the State, and Customers for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.

B. Price Data Retention and Compliance Checks

Periodic Compliance Checks of the information posted for this Contract on Manufacturer's or designated COFA's web site will be conducted by DIR. Upon request by DIR, Manufacturer or designated COFA shall provide verifiable documentation that pricing listed upon this site is uniform with the Customer Discount as stated in Section 7A.

C. Web Site Changes

Manufacturer hereby consents to a link from the DIR web site to Manufacturer's web site or that of its designated COFA in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Manufacturer with subsequent notice of link termination or removal. Manufacturer shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

D. Use of Access Data Prohibited

If Manufacturer or its designated COFA stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by Manufacturer for the purpose of implementing or marketing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes. This Contract constitutes a public document under the laws of the State and Manufacturer or its designated COFA shall not restrict access to the Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

E. Responsibility for Content

Manufacturer is solely responsible for administration, content, intellectual property rights, and all materials at Manufacturer's and designated COFA's web site. Manufacturer is solely responsible for its actions and those of its agents, employees, or COFAs, and agrees that neither Manufacturer nor any of the foregoing has any authority to act or speak on behalf of DIR or the State. DIR requires Manufacturer to list all participating COFA's information on the web site, such as: company name, address, contact information, phone and fax number, email address, State Vendor ID number, and other applicable information as deemed necessary by DIR. DIR also reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent this Contract.

11. Reporting and Administrative Fees

Each COFA shall be responsible for reporting all Products and Services purchased through such COFA under this Contract to Manufacturer. Manufacturer shall then aggregate the various COFA(s) reports and provide to DIR a single cumulative report of purchases made by DIR and its various Customers under this Agreement. The failure to provide the monthly reports, subcontract reports, and pay the administrative fees to DIR on a timely basis will constitute grounds for suspension of Manufacturer for cause. If Manufacturer submits three (3) consecutive monthly reports incorrectly to DIR, DIR reserves the right to suspend or terminate this contract for cause. Manufacturer's liability for any breach of this section is limited to the amount of administrative fees owed to DIR by Manufacturer. DIR shall have the right to verify required reports and to take

any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of COFA's applicable Contract books.

A. Detailed Monthly Report

Each COFA shall electronically provide Manufacturer with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under this Contract for the previous month period. Manufacturer shall provide the cumulative Report to DIR on the fifteenth (15th) business day of each month for the preceding month's purchases. The monthly report shall include the participating individual COFA's sales for the period, the COFA's company name, each Customer name, order date, ship date, description, part numbers, quantity, unit price, extended price, Customer purchase order number, contact name, Customer's complete billing address, and other information as required by DIR. Each line item sale must contain all information listed above or the report will be rejected and returned to the Manufacturer for correction.

B. Historically Underutilized Business Subcontract Reports

Manufacturer shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to this Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

Reports shall be due quarterly in compliance with the following schedule:

September – November: due by December 5th

December – February: due by March 5th

March – May: due June 5th

June – August: due September 5th

C. DIR Administrative Fee

DIR shall receive an administrative fee to defray the DIR costs of negotiating, executing, and administering this Contract. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Manufacturer and any change in the administrative fee shall be incorporated in the price to the Customer. Manufacturer, in turn, shall pay DIR for the full amount of the administrative fee. The fee is due on the 15th day of the close of the previous month period. The amount of the fee is two (2) percent of the net dollar value of total sales to Customers as reported under Section 11 A. Payment will be calculated at the net price of all sales, net of returns and credits. Manufacturer shall establish a schedule for collection of each COFA's administrative fee amount, timed to ensure prompt payment to DIR.

D. Collection of Administrative Fees

It is the duty of Manufacturer to collect the applicable administrative fee from each COFA and forward COFAs payments to DIR. Manufacturer will timely pay DIR as reported under Section 11 C. The cumulative total should reflect the calculated amount as reported under Section 11 A. Manufacturer accepts the risk of mistake and/or insufficient funds for the amounts sent to it by COFAs. DIR shall bear no risk for the collection of fees due from COFA and shall look solely to Manufacturer for performance of the administrative fee payment responsibility.

12. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given on i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. The parties may from time to time, specify any address in the United States as its address

for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party.

If sent to the State:

Patrick W. Hogan
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Fax: (512) 475-4759
Email: patrick.hogan@dir.state.tx.us

If sent to the Manufacturer:

Kent Roberts, General Counsel
Network Associates, Inc.
5000 Headquarter Drive
Plano, TX 75024
Phone: (972) 983-2547
Fax: (972) 963-7425
Email: kent_roberts@nai.com

13. Captions

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

14. Choice of Law

The law of the State of Texas shall govern the construction and interpretation of this Contract. Nothing herein shall be construed to waive the state's sovereign immunity.

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties.

Networks Associates, Inc.
d/b/a Network Associates, Inc.

Authorized By: _____

Name: _____

Title: _____

Date: _____

**The State of Texas, acting by and through the
Department of Information Resources**

Authorized By: _____

Name: _____

Title: _____

Date: _____

Legal: _____



APPENDIX A

STANDARD CLAUSES

STATE OF TEXAS, DIR CONTRACTS

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Appendix A

STANDARD CLAUSES FOR TEXAS DIR CONTRACTS

The parties to the attached Contract, amendment or other agreement of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract. Manufacturer shall be fully liable for COFAs performance and compliance with the clauses herein.

1. INDEMNIFICATION CLAUSE. Manufacturer shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising out of, or resulting from any acts or omissions of the Manufacturer or its agents, employees, subcontractors, or suppliers of subcontractors in the execution or performance of this Contract and any Purchase Order(s) issued under this Contract.

The Manufacturer shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all claims involving infringement of United States patents, copyrights, trade and service marks in connection with the use of any product or service supplied by the Manufacturer. Manufacturer agrees to defend against any and all such claims at Manufacturer's expense, whether or not such claims become the subject of litigation. DIR will provide reasonable assistance in the defense of such claims if so requested by the Manufacturer. Manufacturer agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

2. NON-ASSIGNMENT CLAUSE. This Contract shall be entered into and be binding upon the successors of the parties. Manufacturer may not assign this Contract without the prior written consent of DIR. Any attempt to assign this Contract without the written consent of DIR is null and void.

3. NO QUANTITY GUARANTEES. This Contract is not exclusive to the named Manufacturer. Customers may obtain Information Resources Technologies from other sources during the Contract term. DIR makes no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Information Resources Technologies will be procured through the Contract.

4. CONFIDENTIALITY CLAUSE. Manufacturer acknowledges that DIR is a government agency subject to the Texas Public Information Act. Manufacturer also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

Under the terms of this Contract, DIR may provide Manufacturer with information related to Customers. Manufacturer shall comply with all State of Texas privacy policy guidelines, including, but not limited to, the requirement that Manufacturer shall not re-sell or otherwise

distribute or release to any party in any manner, Customer information.

5. MANUFACTURER CERTIFICATIONS.

Manufacturer certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §31.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of the Manufacturer's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Manufacturer, which if determined adversely to the Manufacturer will have a material adverse effect on the ability of the Manufacturer to fulfill its obligations under this Contract.

6. EQUAL OPPORTUNITY COMPLIANCE.

Manufacturer agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Manufacturer agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Manufacturer under this Contract. If Manufacturer is found to be not in compliance with these requirements during the term of this Contract, Manufacturer agrees to take appropriate steps to correct these deficiencies. Upon request, Manufacturer will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

7. TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE. (Applicable to State Agency Purchases Only)

Manufacturer expressly acknowledges and agrees that State funds may not be expended in connection with the purchase

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of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual and non-visual impairments. Accordingly, the Manufacturer represents and warrants to DIR and each Customer purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

8. COMMODITY SOFTWARE. Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR, unless the agency obtains a waiver from DIR. Manufacturer shall agree to coordinate all agency commodity software sales made pursuant to this Contract through existing DIR contracts, if available. Manufacturer represents it will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, the commodity software to state agencies unless the agency is able to provide a DIR granted waiver that the agency is able to purchase the commodity software outside the DIR Commodity Software contracts. The operating system software and institutions of higher education are not bound to this Code.

9. RECORDS and AUDITS. The Manufacturer shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all compliance checks or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, name of participating COFA for the procurement, unit price, extended price, participating COFA invoice number, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

Manufacturer shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the auditors designated by DIR, including auditors of the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. A reasonable number of Copies and printouts requested by DIR shall be provided by Manufacturer without charge. DIR shall provide Manufacturer ten (10) business days' notice prior to inspecting, auditing, and/or copying Manufacturer's records. Manufacturer's records, whether paper or electronic, shall be made available during regular office hours. Manufacturer personnel familiar with the Manufacturer's books and records shall be available to DIR staff and designees as needed. Manufacturer shall provide adequate office space to DIR staff during the performance of a compliance check.

If any inspection or compliance check performed hereunder reveals an aggregate overcharge to a Customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such compliance check or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the compliance check or inspection, shall be reimbursed to DIR within thirty (30) days from receipt of an invoice from DIR reflecting the cost of the compliance check or inspection.

For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Manufacturer through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Manufacturer can demonstrate to DIR's satisfaction that Manufacturer's calculation of DIR's administrative fee is correct.

Manufacturer understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Reseller further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Reseller will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Reseller and the requirement to cooperate is included in any subcontract it awards pertaining to this Contract.

10. ABILITY TO CONDUCT BUSINESS IN TEXAS. The Manufacturer is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Manufacturer is a "Catalog Information Systems Manufacturer" as defined in §2157.001, Texas Government Code. All computer networking products and services offered to Customers under this Contract are listed in

Appendix A

Manufacturer's catalogue on file with the Texas Building and Procurement Commission.

11. QUOTATIONS, WARRANTY, AND RETURN POLICIES. Manufacturer will adhere to their then-currently published policies concerning quotations, warranties, and return policies. Warranty and return policies for Customers will not be more restrictive or more costly than those warranty and return policies maintained by Manufacturer for other similarly situated Customers for like products or services.

12. INVALID TERM OR CONDITION. If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

13. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION. Manufacturer and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) applicable to State agency purchases only, for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

14. ENTIRETIES. The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract.

15. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS. The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and Manufacturer. Additional Customer terms and conditions, which do not conflict with the contract, may be added by a Purchase Order and given effect upon acceptance from Manufacturer. For individual Purchase Orders, however, the Manufacturer may offer Customers more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Manufacturer shall furnish a copy of such better offerings to DIR upon request.

16. DIR LOGO. Manufacturer and its COFAs may use the DIR logo in the promotion of this Contract to Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Manufacturer or COFA logo; (iii) the DIR logo is only used to communicate the availability of computer networking products and services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

17. MANUFACTURER LOGO. DIR may use the Manufacturer's name and logo in the promotion of this Contract to communicate the availability of Products under this Contract to Customers. Use of the logo may be on the DIR Web Site or on printed materials. Any use of Manufacturer's Logo by DIR must comply with and be solely related to the purposes of this Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in this Contract will give DIR any right, title, or interest in or to Manufacturer's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Manufacturer.

18. SITE PREPARATION. Customer(s) shall prepare and maintain its site in accordance with written instructions furnished by Manufacturer and/or COFA(s) prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

19. TRAINING AND TRADE SHOW PARTICIPATION.

Manufacturer understands and agrees that it must participate by providing a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Manufacturer's expense. Participating COFAs may also be required to provide a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the COFA's expense. Manufacturer and all participating COFAs must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Manufacturer's or the COFA's booth.

20. ORIENTATION MEETING. Upon 60 days from execution of the Contract, DIR may require the Manufacturer and all participating COFAs to attend an orientation meeting to discuss the Contract content and procedures. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Manufacturer. DIR shall bear no cost in the time and travel of the Manufacturer or participating COFAs for attendance at the meeting.

21. USE OF SUBCONTRACTORS. Manufacturer may subcontract installation, training, warranty, or maintenance services. However, Manufacturer shall remain solely responsible for the performance of its obligations under this Contract. If Manufacturer uses any subcontractors, Manufacturer shall satisfy DIR that it has complied and maintains compliance with the DIR HUB Subcontracting Plan.

22. FORCE MAJEURE. DIR, Customer, or Manufacturer may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and

Appendix A

promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Manufacturer will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, TX 78701
(512) 475-4700, voice
(512) 475-4759, fax

23. TERMINATION FOR NON-APPROPRIATION.

Customer may terminate Purchase Orders and DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Manufacturer will be provided thirty (30) days written notice of intent to terminate.

24. TERMINATION FOR CONVENIENCE. Either party may terminate this Contract, in whole or in part, by giving the other party thirty (30) days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Manufacturer will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

25. TERMINATION FOR CAUSE. Either DIR or Manufacturer may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate this Contract. Customers hereunder have no power to terminate this Contract for default. Customer's rights are exclusively based on their Purchase Order.

26. CUSTOMER RIGHTS UNDER TERMINATION.

In the event this Contract expires or is terminated for any reason, a Customer shall retain its rights under the Purchase Order issued with respect to all products or services ordered and accepted prior to the effective termination date.

27. MANUFACTURER AND/OR COFA RIGHTS UNDER TERMINATION.

In the event this Contract expires or is terminated for any reason, a Customer shall pay all amounts due for products or services ordered prior to the effective termination date and ultimately accepted.

28. SURVIVAL. All warranty and/or service agreements that were entered into between Manufacturer and a Customer under the terms and conditions of this Contract shall survive the termination of this Contract.

29. HANDLING OF WRITTEN COMPLAINTS. In addition to other remedies contained in this Contract, a

APPENDIX B

**MANUFACTURER'S CLICK WRAP
LICENSE AGREEMENT**

Network Associates Perpetual End User License Agreement

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9. **Export Controls.** You are advised that the Software is subject to the U.S. Export Administration Regulations. You shall not export, import or transfer Software contrary to U.S. or other applicable laws, whether directly or indirectly, and will not cause, approve or otherwise facilitate others such as agents or any third parties in doing so. You represent and agree that neither the United States Bureau of Export Administration nor any other federal agency has suspended, revoked or denied your export privileges. You agree not to use or transfer the Software for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license. Additionally, you acknowledge that the Software is subject to export control regulations in the European Union and you hereby declare and agree that the Software will not be used for any other purpose than civil (non-military) purposes. The parties agree to cooperate with each other with respect to any application for any required licenses and approvals, however, you acknowledge it is your ultimate responsibility to comply with any and all export and import laws and that Network Associates has no further responsibility after the initial sale to you within the original country of sale.

10. **High-Risk Activities.** The Software is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage (collectively, "High-Risk Activities"). Network Associates expressly disclaims any express or implied warranty of fitness for High-Risk Activities.
11. **Miscellaneous.** This Agreement is governed by the laws of the United States and the State of California, without reference to conflict of laws principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. This Agreement sets forth all rights for the user of the Software and is the entire agreement between the parties. Network Associates reserves the right to periodically audit you to ensure that you are not using any Software in violation of this Agreement. During your standard business hours and upon prior written notice, Network Associates may visit you and you will make available to Network Associates or its representatives any records pertaining to the Software to Network Associates. The cost of any requested audit will be solely borne by Network Associates, unless such audit discloses an underpayment or amount due to Network Associates in excess of five percent (5%) of the initial license fee for the Software or you are using the Software in an unauthorized manor, in which case you shall pay the cost of the audit. This Agreement supersedes any other communications with respect to the Software and Documentation. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of Network Associates. No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by Network Associates or a duly authorized representative of Network Associates. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. The parties confirm that it is their wish that this Agreement has been written in the English language only.
12. **NETWORK ASSOCIATES CUSTOMER CONTACT.** If you have any questions concerning these terms and conditions, or if you would like to contact Network Associates for any other reason, please call (408) 988-3832, fax (408) 970-9727, or write: Network Associates, Inc., 3965 Freedom Circle, Santa Clara, California 95054. <http://www.nai.com>.

APPENDIX C

**MANUFACTURER'S HISTORICALLY UNDERUTILIZED
SUBCONTRACTING PLAN**



Department of Information Resources HUB SUBCONTRACTING PLAN

Policy on Utilization of Historically Underutilized Businesses

In accordance with Texas Government Code, §§2161.181-182 and Texas Administrative Code (1 TAC) §111.11, state agencies shall make a good faith effort to use Historically Underutilized Businesses (HUBs) in contracts for construction, services, including professional and consulting services, and commodities contracts. The Texas Building and Procurement Commission's (TBPC) HUB Rules, 1 TAC §§111.11-111.28, encourage the use of HUBs by implementing these policies through race, ethnic, and gender-neutral means. The Department of Information Resources (DIR) has adopted the TBPC rules as its own.

The purpose of the HUB Program is to promote full and equal business opportunities for all businesses in State contracting in accordance with the goals specified in the State of Texas Disparity Study. Each state agency shall make a good faith effort to meet or exceed the goals identified below and assist HUBs in receiving a portion of the total contract value of all contracts that the agency expects to award in a fiscal year in accordance with the following procurement goals/percentages:

1. 11.9% for heavy construction other than building contracts;
2. 26.1% for all building construction, including general contractors and operative builders' contracts;
3. 57.2% for all special trade construction contracts;
4. 20% for professional services contracts;
5. 33% for all other services contracts;
6. 12.6% for commodities contracts.

It is the policy of DIR to make a good faith effort to achieve the annual program goals by contracting directly with HUBs or indirectly through subcontracting opportunities in accordance with the Texas Government Code, Chapter 2161, Subchapter F, and TBPC's HUB Rules, 1 TAC §111.14.

HUB Subcontracting Plan (HSP) Procedures

The following procedures are specified pursuant to 1 TAC §§111.13 and 111.14:

- a. Before proposing to enter into a contract with an expected value of \$100,000 or more, and prior to issuing bids, proposals, offers, notices or invitations to negotiate relating to the proposed contract (offering documents), DIR staff responsible for the contract shall determine if it is probable that opportunities exist for HUBs to provide any or all of the services or products to be obtained under the contract.
- b. If subcontracting opportunities are not probable, the DIR offering documents will include a statement attesting that DIR has determined subcontracting opportunities are not probable under the proposed contract. The reasons for this determination will be documented and placed in the project file along with a statement signed by the DIR staff responsible for the contract and the DIR HUB Coordinator.
- c. If DIR staff determine that HUB subcontracting opportunities are probable, DIR will state such probability exists in the offering documents and shall require that those potential vendors responding to the offering documents submit an HSP (see attachment A for HSP forms). If the potential vendor does not include or does not submit a complete HSP, the potential vendor's response will be considered non-responsive and will be rejected. The HSP submitted by the awarded vendor will become a provision of the contract. A list of

TBPC HUB certified vendors that may perform the subcontracting opportunities is available through the Internet at: <http://www.tbpc.state.tx.us/cmb/cmbhub.html>.

HSP Compliance

Once a contract has been awarded, the awarded vendor shall maintain business records documenting its compliance with the HSP and shall submit compliance reports to DIR periodically and in a format required by the contract.

If circumstances necessitate changes to the awarded vendor's HSP, the awarded vendor must notify DIR in writing and must comply with the provisions of 1 TAC §111.14(b) relating to developing and submitting a subcontracting plan before any modifications to the HSP can be considered by DIR. If the awarded vendor subcontracts any of the work under the awarded contract without prior DIR authorization and compliance of 1 TAC §111.14(b), the awarded vendor may be considered in breach of the awarded contract and subject to any remedial actions provided by state law and HUB rules, possibly including termination of the contract.

DIR may audit the electronic and non-electronic records of the awarded vendor to determine contract and HSP compliance.

Attachment A

**Department of Information Resources
HUB Subcontracting Plan Forms**

SEP 24 2003 7:00AM HP LASERJET 3200

**Historically Underutilized Businesses
Subcontracting Plan (Form 1)**

This form is required as part of the Historically Underutilized Businesses (HUB) Subcontracting Plan. Failure to include this form and the applicable forms specified herein will result in automatic disqualification of your response to the offering document.

Vendor Company Name: Network Associates, Inc.

Vendor Identification Number:

77-0316593

Department of Information Resources Offering Document Number: DIR-VBC-03-022

1. The Department of Information Resources has determined that HUB subcontracting opportunities are probable. Is your company proposing to subcontract any portion of this contract?

☒ Yes -

Complete the following forms:

- Determination of Good Faith Effort (Form 2)
- Solicitation of HUB Subcontractors (Form 3)
- Selected Subcontractors (Form 4)

What percentage of the proposed work is to be performed by your company?
10%

☐ No - Complete the Statement of Intent (Form 5)

2. Is your company certified as a HUB by the State of Texas?

☐ Yes ☒ No

I have read and understand the Department of Information Resources' Policy on Utilization of HUBs.

MARK SMALL
Authorized Representative Name

SR VP
Authorized Representative Title

[Signature]
Authorized Representative Signature

9-24-03
Date



**HUB Subcontracting Plan
Determination of Good Faith Effort (Form 2)**

Vendor Company Name: Network Associates

Department of Information Resources Offering Document Number: DIR-VPC-03-032

The potential vendor must make a good faith effort in development of the HUB Subcontracting Plan. Please provide answers to the questions below and provide necessary documentation to support the answers. The Department of Information Resources may review the supporting documentation to determine if a good faith effort was made in accordance with applicable 1 TAC rules and the contract specifications. If it is determined that a good faith effort was not made, the vendor response to the offering document shall be rejected as a material failure to comply with advertised specifications. The reasons for rejection shall be recorded in the project file.

1. Did your company divide the contract work into reasonable portions in accordance with prudent industry practices? ☒ Yes ☐ No
2. Did your company send notices containing adequate information about bonding, insurance, the plans, the specifications, scope of work, and other requirements of the contract to three or more qualified HUBs allowing five working days from receipt of notice for HUBs to participate effectively? ☐ Yes ☒ No
3. Did your company advertise the subcontracting opportunities in general circulation, trade association, and/or other minority/women focused media? ☐ Yes ☒ No
4. Did your company assist non-certified HUBs to become certified? ☒ Yes ☐ No
5. Did your company negotiate in good faith with qualified HUBs, not rejecting qualified HUBs who were the best value responsive bidder? ☒ Yes ☐ No
6. Did your company document reasons for rejection or meet with rejected HUBs to discuss the rejection? ☐ Yes ☒ No

**HUB Subcontracting Plan
Solicitation of HUB Subcontractors (Form 3)**

Page ____ of ____

Use a separate form for each subcontract solicited. Identify each HUB to which a notice of solicitation was given. Use continuation pages if necessary.

Vendor Company Name: Network Associates, Inc.

Department of Information Resources Offering Document Number: DIR-VPC-03-032

Brief Description of Work to be Performed: Configuration, consultation, sale, and implementation of Network Associates products and services

Vendor's Estimate of Dollar Value of Subcontract: 2.7M

1. Name of HUB Subcontractor/Supplier: SHI Government Solutions

Address: 1250 Capital of Texas Highway, Austin, TX 78746

Phone: 512.634.8100 Owner(s): Koguan Leo

If TBPC HUB certified, provide Vendor Identification Number: 1223695478500

If not TBPC HUB certified, select one of the following:

<input type="checkbox"/> Black American Male	<input type="checkbox"/> Hispanic American Male	<input type="checkbox"/> Native American Male
<input type="checkbox"/> Black American Female	<input type="checkbox"/> Hispanic American Female	<input type="checkbox"/> Native American Female
<input checked="" type="checkbox"/> Asian Pacific American Male	<input type="checkbox"/> Woman	
<input type="checkbox"/> Asian Pacific American Female		

2. Name of HUB Subcontractor/Supplier: Unison, LLC

Address: 3908 Bordeaux Circle, Flower Mound, TX 75022

Phone: 972.756.0747 Owner(s): Samali Gutierrez-May

If TBPC HUB certified, provide Vendor Identification Number: 1752834141900

If not TBPC HUB certified, select one of the following:

<input type="checkbox"/> Black American Male	<input type="checkbox"/> Hispanic American Male	<input type="checkbox"/> Native American Male
<input type="checkbox"/> Black American Female	<input checked="" type="checkbox"/> Hispanic American Female	<input type="checkbox"/> Native American Female
<input type="checkbox"/> Asian Pacific American Male	<input type="checkbox"/> Woman	
<input type="checkbox"/> Asian Pacific American Female		

**HUB Subcontracting Plan
Solicitation of HUB Subcontractors (Form 3)
Continuation Page**

Page ____ of ____

Vendor Company Name: Network Associates

Department of Information Resources Offering Document Number: DIR-VPC-03-032

Vendor's Estimate of Dollar Value of Subcontract: \$250,000

Vendor's Estimate of Percentage of the Dollar Value of the Proposed Contract: \$2,700,000

Vendor's Estimate of Percentage of the Proposed Work: 10%

Duration of Subcontract: 2 years

Name of Subcontractor/Supplier: SHI Government Solutions

Address: 1250 Capital of Texas Highway, Austin, TX 78746

Phone: 512.634.8100 Owner(s): Koguan Leo

Is the subcontractor a TBPC certified HUB? (x) Yes () No

If yes, provide Vendor Identification Number: 1223695478500

Description of materials/services to be performed under the agreement with the subcontractor for amount indicated above:

**HUB Subcontracting Plan
Selected Subcontractors (Form 4)**

Please submit a separate form for each subcontractor selected for work on the proposed contract.

Vendor Company Name: Network Associates

Department of Information Resources Offering Document Number: DIR-VPC-03-032

Vendor's Estimate of Dollar Value of Subcontract: \$250,000

Vendor's Estimate of Percentage of the Dollar Value of the Proposed Contract: \$2,700,000

Vendor's Estimate of Percentage of the Proposed Work: 10%

Duration of Subcontract: 2 years

Name of Subcontractor/Supplier: Unison, LLC

Address: 3908 Bordeaux Circle, Flower Mound, TX 75022

Phone: 972.756.0747 Owner(s): Samali Gutierrez-May

Is the subcontractor a TBPC certified HUB? (x) Yes () No

If yes, provide Vendor Identification Number: 1752834141900

Description of materials/services to be performed under the agreement with the subcontractor for amount indicated above:

APPENDIX D
MANUFACTURER'S PRICING SCHEDULE

NAI Products**McAfee**

Software	34% off MSRP
Hardware/Software Bundles	21% off MSRP
Support and Services	0%

Sniffer

Software & Software/ Hardware Bundles	13% off MSRP
Hardware	5% off MSRP
Support and Services	0%

Magic Software	25% off MSRP
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